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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

HEARINGS CLERK  
EPA REGION 10

In the Matter of:

WILSON OIL, INC.,  
d/b/a WILCOX & FLEGEL OIL CO.  
Longview Terminal, Washington.

Respondent.

**DOCKET NO. CWA-10-2017-0024**

**CONSENT AGREEMENT AND  
FINAL ORDER**

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Wilson Oil, Inc. d/b/a Wilcox & Flegel Oil, Co. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of the State of Washington and is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.2. At the time of an EPA inspection conducted on July 9, 2015 (“Inspection”), Respondent was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an oil storage and distribution facility located at 110 Panel Way in Longview, Washington (“Facility”).

3.3. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

3.4. Respondent, at the time of the Inspection, was engaged in gathering, storing, processing, transferring, distributing, using or consuming oil or oil products at the Facility, as described in 40 C.F.R. § 112.1(b).

3.5. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

3.6. The Facility had, at the time of the Inspection, an aggregate above-ground storage capacity of 943,433 gallons. Before the Inspection, on or around August 2014, Respondent permanently closed “Tank 3” located within “Tank Farm A” at the Facility, which had a storage capacity of 356,893 gallons.

3.7. Respondent’s Spill Prevention, Control and Countermeasure Plan, dated July 2015, Revision Four, (“SPCC Plan”) indicates an approximate distance of 0.4 miles between the Facility and the Columbia River, and further identifies the Columbia River as the receiving body of water for potential spills originating from the Facility. The Columbia River is a “navigable water” and “waters of the United States,” and is subject to the jurisdiction of the Act. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 122.2.

3.8. The Facility is a non-transportation facility that, due to its location, could reasonably have been expected, at the time of the Inspection, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity and is therefore subject to the SPCC regulations at 40 C.F.R. Part 112.

3.9. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, shall have prepared and implemented a written SPCC plan for the facility that complies with 40 C.F.R. § 112.7 and other applicable sections of 40 C.F.R. Part 112.

3.10. During the Inspection, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112 related to SPCC plans. On March 15, 2016, EPA issued a Notice of Intent to File an Administrative Complaint for Violation of the Clean Water Act and Opportunity to Confer (“NOI”) to Respondent alleging certain violations of these requirements, including the following:

3.10.1 Respondent failed to maintain a signed copy of its Certification of Applicability of the Substantial Harm Criteria, as required by 40 C.F.R. Pt. 112, Appendix C, Section 3.0;

3.10.2 The SPCC Plan was not amended to reflect the closure in August 2014 of Tank 3 within Tank Farm A, as required by 40 C.F.R. § 112.5(a);

3.10.3 The SPCC Plan failed to adequately specify the applicable industry standard for conducting inspections of Respondent’s 700 to 30,000-gallon above ground storage tanks (ASTs), did not provide an adequate rationale for deviating from the applicable industry standard, and did not adequately justify the use of a hybrid integrity inspection program for these ASTs, as required by 40 C.F.R. § 112.7(a)(2);

3.10.4 The SPCC Plan failed to include an adequate environmental equivalency analysis for application of the non-specific inspection method identified in the SPCC Plan for Respondent’s field fabricated ASTs, which was purportedly equivalent to American Petroleum Institute Standard 653, as required by 40 C.F.R. § 112.7(a)(2);

3.10.5 The SPCC Plan failed to sufficiently identify all containers located in Tank Farm A and include an adequate diagram depicting all containers located in Tank Farm A, as required by 40 C.F.R. §§ 112.7(a)(3) and (a)(3)(i);

3.10.6 The Facility failed to utilize adequate and effective secondary containment in Tank Farm A, as required by 40 C.F.R. § 112.8(c)(2);

3.10.7 Respondent failed to perform satisfactory integrity testing or maintain integrity test records for the hybrid integrity test program with regard to Respondent's 700 to 30,000-gallon ASTs or its field-fabricated ASTs, as required by 40 C.F.R. §§ 112.7(e) and 112.8(c)(6);

3.10.8 Respondent failed to conduct periodic training on its SPCC Plan contents, as required by 40 C.F.R. § 112.8(f)(1); and

3.10.9 The SPCC Plan failed to include test procedures and record keeping protocols for liquid level sensing devices on ASTs located in "Tank Farm B," and Respondent failed to provide records for such test procedures at the Inspection, as required by 40 C.F.R. §§ 112.7(e) and 112.8(c)(8)(v).

3.11 Respondent failed to implement an adequate SPCC plan for the Facility, as described in Paragraph 3.10, which violated 40 C.F.R. § 112.3.

3.12 Respondent's failure to comply with the requirements of 40 C.F.R. Part 112 has subjected it to civil penalties pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), not to exceed \$16,000 per day for each day the violation continues, except that the maximum amount of penalty may not exceed \$187,500.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate civil penalty to settle this action is \$44,069.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO. EPA will provide Respondent with prompt notice of the date EPA files the Final Order with the Regional Hearing Clerk, which establishes its effective date.

4.5. Payment under this CAFO must be made by a cashier's check or certified check, payable to the order of "Treasurer, United States of America" and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must send photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Teresa Young  
Regional Hearing Clerk  
U.S. Environmental Protection Agency

Rick Cool  
Compliance Officer  
U.S. Environmental Protection Agency

Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys' fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. Respondent will implement a Supplemental Environmental Project (“SEP”), consisting of the installation of the TS-550 evo fuel management system (“TS-550 System” or “System”) manufactured by Franklin Fueling Systems at the Facility and at Respondent’s Lewis County Plant, which is located at 204 West Reynolds Avenue, Centralia Washington.

4.10. Respondent will install probes for the TS-550 System in all eight ASTs in Tank Farm A at the Facility and in the eight largest ASTs at the Lewis County Plant. In addition, Respondent will install sensors for the TS-550 System in the containment areas surrounding these ASTs at both facilities. All sensors and probes will be wired to a base console installed at each facility. The base consoles will be connected to Respondent’s internal network via Ethernet, thereby allowing Respondent and its employees to remotely access data regarding the probes and sensors from the base console. In the event that any of the ASTs connected to the base console experience high or low liquid levels, if liquid enters the containment areas surrounding these ASTs, or if there is a disruption in the signal between the base console and the sensors or probes, an alarm will be triggered and instantaneous email alerts will be sent to designated personnel of Respondent.

4.11. Respondent will implement and begin operating the SEP within one hundred and eighty (180) days of the effective date of the Final Order set forth in Part V, in accordance with all provisions described in this Consent Agreement.



4.12. Respondent certifies to the truth, accuracy, and completeness of all cost information provided to EPA in connection with EPA's approval of the SEP, and that Respondent in good faith estimates that the cost to implement the SEP will be \$125,000.

4.13. Respondent also certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO; and that Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.

4.14. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a federal grant, federal cooperative agreement, federal loan, or federally-guaranteed loan.

4.15. Respondent shall submit a SEP Completion Report ("Report") to EPA within thirty (30) days after completing construction of the SEP. The Report shall contain the following information:

4.15.1 A description of the SEP as implemented;

4.15.2 Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;

4.15.3 Documentation providing evidence of completion and operation of the SEP, including photos, invoices, and receipts;

4.15.4 Documentation of all SEP expenditures;

4.15.5 A description of any problems encountered and the solutions thereto;

and

4.15.6 A description of the environmental and public health benefits resulting from implementation of the SEP.

4.16. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents performance of a SEP within the specified time period. A Force Majeure event does not include, *inter alia*, increased cost of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.17. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, electric mail or hand delivery to:

Rick Cool  
Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900

Seattle, WA 98101

4.18. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the Report is accepted pursuant to Paragraph 4.19, and Respondent shall provide the documentation of any such underlying data to EPA within fifteen (15) days of receiving a written request for such information. In all documents or reports submitted to EPA pursuant to this CAFO, including without limitation the Report, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

4.19. Within a reasonable time following Respondent’s delivery of the Report described in Paragraph 4.15, EPA will: (i) accept the Report and notify Respondent in writing that the SEP has been satisfactorily completed; or (ii) if EPA determines the SEP has been satisfactorily completed but there are deficiencies in the Report, reject the Report, notify Respondent in writing of the deficiencies, and allow Respondent thirty (30) days to correct the identified deficiencies; or (iii) if EPA determines the SEP has not been satisfactorily completed, reject the Report and determine whether to seek stipulated penalties in accordance with Paragraphs 4.20 and 4.21.

4.20. If Respondent does not satisfactorily complete the SEP as required by this CAFO, then stipulated penalties shall be due and payable by Respondent upon written demand by EPA in accordance with Paragraphs 4.21 and 4.22. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

4.21. If Respondent fails to satisfactorily complete the SEP as required by this CAFO, then Respondent shall, upon written demand by EPA, pay stipulated penalties in the following amount for each day that the SEP remains incomplete:

<b>Period of Noncompliance</b>	<b>Penalty Per Violation Per Day</b>
1 <sup>st</sup> through 7 <sup>th</sup> day	\$ 100.00
8 <sup>th</sup> through 21 <sup>st</sup> day	\$ 250.00
22 <sup>nd</sup> through 30 <sup>th</sup> day	\$ 500.00
Greater than 30 days	\$ 1,000.00

4.22. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment shall be submitted in accordance with the provisions of Paragraphs 4.5 and 4.6. Interest and late charges shall be paid as stated in Paragraph 4.7.

4.23. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP from the date of the execution of this CAFO shall include the following language:

“This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Clean Water Act.”

4.24. Dispute Resolution. Unless otherwise expressly provided for in this CAFO, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism for resolving disputes regarding EPA's determination over whether or not Respondent has satisfactorily completed the SEP and whether Respondent has made a good faith, timely effort to implement the SEP. The dispute resolution procedures of this Paragraph may only be invoked to challenge these determinations and do not extend to any other aspect of this CAFO. If Respondent objects to EPA's determination of whether the SEP has been satisfactorily completed or whether Respondent has made a good faith, timely effort to implement the SEP, then it shall notify EPA in writing of its objections within thirty (30) days of receiving notice of EPA's determination, unless the objections have been resolved informally. EPA and Respondent shall have thirty (30) days after EPA's receipt of Respondent's written objections to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period may be extended by mutual agreement of the parties. Any agreement reached by the parties pursuant to this Paragraph shall be in writing and shall, upon signatures of the parties, be incorporated into and become an enforceable part of this CAFO. If the Parties are unable to reach an agreement within the Negotiation Period, then the Director of the Office of Compliance and Enforcement, EPA Region 10, will issue to Respondent a written decision resolving the dispute. This decision shall be incorporated into and become an enforceable part of this CAFO. Respondent's obligations under this CAFO shall not be tolled by submission of any objection for dispute resolution under this Paragraph. The stipulated penalties described in Paragraphs 4.20 through 4.22 will be tolled during the pendency of the dispute resolution procedures provided for in this Paragraph. Following resolution of the dispute, as provided in this Paragraph, Respondent shall fulfill the obligations that were the subject of the dispute in accordance with the agreement reached or with

EPA's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

4.25. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit or EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this CAFO.

4.26. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.27. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violations alleged in Part III above.

4.28. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.29. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.30. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.31. Compliance with the terms and conditions of this CAFO, including full payment of the civil penalty described in Paragraph 4.3 and completion of the SEP, shall resolve Respondent's liability for the violations alleged in Article III (Allegations) and the NOI.

4.32. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

**DATED:**

12/13/16

**FOR RESPONDENT:**

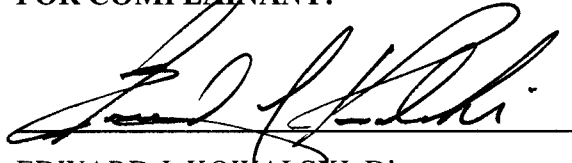


AARON WILCOX, President  
Wilson Oil, Inc.,  
d/b/a Wilcox & Flegel Oil, Co.

**DATED:**

12/20/2016

**FOR COMPLAINANT:**



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

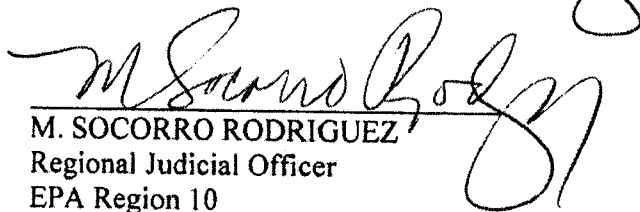
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III and the NOI. In accordance with 40 C.F.R. § 22.31(a), this CAFO resolves the causes of action alleged in this CAFO and the NOI, but nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not alleged in this CAFO or the NOI. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and any regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 25<sup>rd</sup> day of January, <sup>2017</sup> ~~2016~~.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: WILSON OIL, INC., d/b/a WILCOX & FLEGEL OIL CO., CWA-10-2017-0024** was filed with the Regional Hearing Clerk and served on the following addressees in the manner and on the date specified below:

The undersigned certifies that a true and correct copy of the above-described document was delivered to:

Ashley Palomaki  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the above-described document was placed in the United States mail certified/return receipt to:

Aaron Wilcox  
Wilcox & Flegel Oil, Co.  
95 Panel Way  
Longview, Washington 98632

DATED this 23 day of January 2016

  
\_\_\_\_\_  
Signature

Teresa Young  
Regional Hearing Clerk  
EPA Region 10